merce. *Burroughs* v. *Whitman*, 59 Mich. 279; *The Daniel Ball*, 10 Wall. 557. Though in Massachusetts, rivers used for pleasure boating are held navigable. *Attorney-General* v. *Wood*, 108 Mass. 436. Many decisions uphold the right of riparian owners to maintain dams and such other obstructions as are necessary to a reasonable use of streams, but, that they may maintain fences for mere arbitrary purposes seems never before to have been decided, though there is much *dicta* to support such a decision. *Groat et al* v. *Moak*, 94 N. Y. 128.

PUBLIC WATER—PUBLIC USE—CUTTING ICE—INJUNCTION.—SANBORN V. PEOPLE'S ICE CO., 84 N. W. 641 (Minn.).—Defendant cut ice for sale from public waters, White Bear Lake. Plaintiff, a riparian proprietor, claimed special damages from consequent lowering of level and brought action to restrain defendant. *Held*, cutting ice for commercial purposes is not a common right. Lovely and Brown, JJ., dissenting.

The Court, in granting the injunction, undertakes to distinguish taking ice for domestic use from taking for sale, and holds that had the injury complained of resulted from taking ice for domestic purposes, no cause of action would have arisen. None of the authorities make any such distinction, and the injustice which would result is apparent. *Lamprey* v. *State*, 52 Minn. 181; *Ice Co.* v. *Davenport*, 149 Mass. 322; *Concord Co.* v. *Robertson*, 66 N. H. 1. The dissenting judges well say, "if the right to take ice is a public right, as conceded, this Court has no authority to say how much or how little any person can take for the public use."

RAILROADS—ACCIDENT AT CROSSING—GATES—FLAGMAN—CONTRIBUTORY NEGLIGENCE.—WOEHRLE V. MINN. TRANSFER CO., 84 N. W. 791 (Minn.).—The plaintiff, while crossing in a wagon defendant's railway track on a public highway, was injured by defendant's engine. The plaintiff, relying in great measure on the absence of defendant's flagman, who was accustomed to be in sight when trains approached, did not stop and listen. *Held*, reversing the decision of the trial court, that the *per se* rule in cases of failure to stop, look and listen did not apply. Lewis and Collins, JJ, dissenting.

According to some authorities, if the customary flagman is absent, a traveler is guilty of contributory negligence as a matter of law, unless he looks or uses ordinary precautions. *Lake Shore & M. S. R.R. Co.* v. *Franz*, 127 Penn. 297; *Tyler* v. *R.R. Co.*, 157 Mass. 336; *Dundon* v. *R.R. Co.*, 67 Conn. 266. But the rule that a traveler must stop, look and listen is relaxed in cases where gates or a flagman, or both, are provided by the railroad, partial assurance being given by the very fact of their being there. Hence, in these cases, not the same degree of care need be taken. *Gusling* v. *Sharp*, 96 N. Y. 676; *Palmer* v. *Railway Co.*, 112 N. Y. 234; *Burns* v. *Rolling Mill Co.*, 65 Wis. 312. Under such circumstances, how much care is needed is a question for the jury.

SURFACE WATER—RIGHT OF LANDOWNER—TRESPASS.—FORBELL V. CITY OF NEW YORK, 58 N. E. Rep. 644 (N. Y.).—A city, digging wells for mercantile purposes, so as to capture the percolations from a large surrounding area of land, and thereby lowering the underground water of adjacent land, is liable for damage done to crops on such land.

The right to percolations has been recognized by innumerable decisions on the ground that their source is unknown. In *Smith* v. *City of Brooklyn*, 18 App. Div. 340, the draining of a distant pond and brook by suction pumps was actionable, the source of the percolation being evident. The Court in the present case extends the application of this principle to the draining of subsurface waters, inasmuch as defendant knew beforehand the effect of the wells on adjoining lands.